

Federal Court



Cour fédérale

Date: 20211014

Dockets: IMM-2639-20

Citation: 2021 FC 1068

Ottawa, Ontario, October 14, 2021

PRESENT: The Honourable Madam Justice Simpson

BETWEEN:

AHMED RABEE

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

**(Delivered orally from the Bench by teleconference
at Ottawa, Ontario on September 28, 2021)**

[1] This application is for judicial review of an Immigration Officer's decision dated October 7, 2019, in which he or she refused the application of Ahmed Rabee [the Applicant] for permanent resident status on humanitarian and compassion [H&C] grounds.

[2] In the Applicant's hearing before the Refugee Protection Division [the RPD] credibility was the determinative issue. His evidence included numerous inconsistencies between his Basis of Claim [BOC] form and his oral testimony, and he had difficulty answering simple questions. However, Medical records indicate that during his hearing he had an undiagnosed mental health issue. Shortly after the RPD released its decision, the Applicant was diagnosed with schizoaffective disorder, bipolar type.

[3] The Applicant's H&C application shows that after the RPD hearing he was committed twice and spent a total of 40 days in hospital. As well, his family found him a place in Bruce Villa, which is a special needs residential facility. His parents and siblings found him this placement.

[4] The determinative issue in the present application for judicial review is whether the H&C officer properly assessed the hardship the Applicant would face if returned to Palestine, in particular to the West Bank, given his severe mental illness.

[5] There is an underlying problem in this case. The Applicant originally applied for a PRAA and for H&C relief. Both applications were assigned to the same officer [Officer #1]. However, the decision on the H&C application was sent back to another officer [Officer #2] for reconsideration. This meant the material that was before Officer #1 on the PRAA was not before Officer #2 when he reconsidered the H&C application. Officer #2 was missing material evidence, including affidavits from the Applicant's father and brother, and important pages of the Application record in the PRAA. In particular, I refer to pages 97 to 103, 70 to 73, and 56 to

60. It will be important to place this material before the officer who reconsiders this H&C decision.

I. THE H&C DECISION

[6] Based on the material before the Officer, H&C relief was refused because:

1. the closeness of the relationship between the Applicant and his parents and siblings was unclear;
2. the immigration status of the Applicant's family members in Canada was unknown;
3. the Applicant could return to Palestine and retain family ties through telephone, mail, and the Internet;
4. the date of the Applicant's first diagnosis was not clear on the evidence and he seems to have lived successfully with his mental illness for many years; and
5. the Applicant can obtain the services he needs in the West Bank.

II. DISCUSSION

[7] The Hotel Dieu hospital notes show that on one occasion the Applicant's father and, on another occasion, his brother accompanied him to the hospital. As well, the Applicant's supplementary information for H&C consideration shows that he lived with his parents and a sister and brother before he moved to the Bruce Villa. Given this evidence, it was unreasonable of the Officer to conclude that the Applicant's closeness to his family was unclear.

[8] The hospital notes also indicate that the Applicant had no insight into his illness and was unaware that he was being treated for a mental disorder. He thought his problem was a sore shoulder.

[9] Although in the past the Applicant had lived with his mental illness, it was unreasonable of the Officer to conclude that he had done so successfully. In Russia, where he studied dentistry, he failed to complete his course and was hospitalized for 22 days. He was unemployed for many years after his return to the West Bank and he never held a permanent job. In my view, the Officer failed to consider these facts.

[10] The conclusion that the Applicant could retain family ties through mail and the Internet, while true, does not address the real issue. The Applicant requires daily supervision to ensure that he takes his medications. Mail, Internet, and telephone do not help in this regard, especially if the Applicant has a recurrence of his belief that he does not require any medication.

[11] The Applicant's doctor's letter of June 23, 2017, shows that the Applicant's problems stem from his failure to take his medications. When off his medications, he does not care for himself. He does not shower, dress appropriately, groom himself, or prepare meals. The doctor states that he requires monitoring of his treatments and follow-up. In other words, he needs to live in an assisted living facility or a family home, where staff or family oversee his personal care and ensure that he takes his medication.

[12] The Officer unreasonably concluded that in Palestine the Applicant could obtain these services. However, the evidence was clear that he has no family in the West Bank and that there are no outpatient services or residences where the Applicant could live.

[13] Finally, the Applicant's BOC shows that the vast majority of his siblings in Canada are Canadian citizens. Accordingly, contrary to the Officer's conclusion, their immigration status was not unknown.

[14] For all these reasons, this Application will be allowed.

[15] No question was posed for certification for appeal.

JUDGMENT IN IMM-2639-20

THIS COURT'S JUDGMENT is that

1. The Application is allowed; and
2. The H&C Application is to be reconsidered by a different officer.

"Sandra J. Simpson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2639-20

STYLE OF CAUSE: AHMED RABEE v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

PLACE OF HEARING: BY TELECONFERENCE USING ZOOM

DATE OF HEARING: SEPTEMBER 28, 2021

JUDGMENT AND REASONS: SIMPSON J.

DATED: OCTOBER 14, 2021

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